

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	File No. EB-06-SE-336
United States Cellular Corporation)	NAL/Acct. No. 200732100014
)	FRN: 0008308199

ORDER

Adopted: February 23, 2007

Released: February 26, 2007

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the Consent Decree entered into between the Enforcement Bureau (“Bureau”) and United States Cellular Corporation (“US Cellular”). The Consent Decree terminates an investigation into US Cellular’s compliance with the environmental regulations set forth in Sections 1.1307, 1.1308, 1.1311 and 1.1312 of the Commission’s Rules (“Rules”) with respect to its construction of a wireless base station near Fries, Virginia.¹

2. The Bureau and US Cellular have negotiated the terms of a Consent Decree that would resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. Based on the record before us, we conclude that no substantial or material questions of fact exist with respect to this matter as to whether US Cellular possesses the basic qualifications, including those related to character, to hold or obtain any FCC license or authorization.

4. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest will be served by adopting the Consent Decree and terminating this investigation.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act² and Sections 0.111 and 0.311 of the Rules,³ the attached Consent Decree **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the Enforcement Bureau’s investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that US Cellular shall make its voluntary contribution to the United States Treasury, as specified in the Consent Decree, by credit card through the Commission’s Debt and Credit Management Center at (202) 418-1995, or by mailing a check or similar instrument,

¹47 C.F.R. §§ 1.1307, 1.1308, 1.1311 and 1.1312.

²47 U.S.C. § 154(i).

³47 C.F.R. §§ 0.111 and 0.311.

payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

8. **IT IS FURTHER ORDERED** that copies of this Order and Consent Decree shall be sent by regular first class mail and certified mail, return receipt requested, to James R. Jenkins, Vice President, Legal and Regulatory Affairs, United States Cellular Corporation, 8410 W. Bryn Mawr, Suite 700, Chicago, Illinois 60631 and to Peter Connolly, Esq., Holland & Knight, 2099 Pennsylvania Avenue, N.W., Suite 100, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

CONSENT DECREE**I. INTRODUCTION.**

The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (the “FCC” or “Commission”) and United States Cellular Corporation (“US Cellular”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation regarding US Cellular’s compliance with the environmental regulations set forth in Sections 1.1307, 1.1308, 1.1311, and 1.1312 of the FCC’s Rules with respect to the construction of a wireless base station near Fries, Virginia.¹

II. BACKGROUND.

1. US Cellular provides wireless service in numerous markets nationwide, including the City of Galax in Virginia Rural Service Area #2. In early 2005, US Cellular decided to reconfigure the antennas on its Galax, Virginia tower in order to implement a sectorization of the cell. This necessitated construction of an additional cell near Fries, Virginia to preserve wireless service to the Fries area.

2. In September of 2005, US Cellular obtained local zoning consent to construct the Fries tower and engaged the services of an environmental consultant to secure necessary environmental and other regulatory consents to construct the tower. Through its consultant, during the summer and autumn of 2005, US Cellular took various steps necessary to secure the necessary environmental consents, including notification to the Virginia State Department of Historic Resources (“VDHR”), and communications with the U.S. Bureau of Indian Affairs, Virginia Department of Inland Fisheries, and U.S. Fish and Wildlife Service regarding the proposed tower. On November 8, 2005, the VDHR, which serves as the Virginia State Historic Preservation Officer sent to US Cellular’s consultant a letter, acknowledging the information previously filed, but stating that FCC Form 620, the “New Tower Submission Packet” should also be filed in order for the tower to be reviewed. Neither US Cellular nor the FCC learned of this letter until January 2006.²

3. On November 8, 2005, US Cellular began construction of the access road to the Fries tower, and erected the tower on December 23, 2005, but did not install transmitting antennas. On January 3, 2006, based on a complaint from a member of the public about the Fries tower, the FCC’s Wireless Telecommunications Bureau contacted US Cellular’s FCC attorney and informed him that no Form 620 had been filed. US Cellular immediately stopped all work on the tower project. Subsequently, US Cellular engaged the services of another environmental consultant, Stokes Environmental, which prepared and submitted the Form 620, with attachments, to the VDHR and to the Eastern Band of Cherokee Indians (“EBCI”), the only Indian tribe which had expressed an interest in the proposed tower through the FCC’s Tower Construction Notification System.

4. During 2006, US Cellular provided documentation to the Wireless Telecommunications Bureau regarding the Fries tower either through submissions to the FCC or through copies of submissions to VDHR. Such documentation has included but is not limited to letters and other filings dated January

¹ 47 C.F.R. §§ 1.1307, 1.1308, 1.1311 and 1.1312.

² On November 22, 2005, the VDHR also sent the Wireless Telecommunications Bureau a letter advising that the Fries tower was being constructed without completion of the historic review process. See Letter from Kristen Hill, Virginia Department of Historic Resources to Ivy Harris, Federal Communications Commission, Wireless Telecommunications Bureau (November 22, 2005). The Wireless Telecommunications Bureau, however, did not receive this letter.

23, 2006, February 6, 2006, April 6, 2006, April 7, 2006, April 24, 2006, May 30, 2006, June 20, 2006 and August 23, 2006.

5. During 2006, US Cellular engaged in extensive correspondence with VDHR, the Town of Fries, Grayson County, the EBCI and other interested parties concerning the Fries tower. On May 30, 2006, the VDHR released a letter stating that the Fries tower had an adverse affect on the Fries Historic District and Fries Recreation Center.³ US Cellular subsequently entered into negotiations with the VDHR, the Town of Fries and Grayson County regarding possible measures to be incorporated into a Memorandum of Agreement (“MOA”) to mitigate any adverse effect from the Fries tower, in accordance with the provisions of the Nationwide Programmatic Agreement.⁴ On February 23, 2007, US Cellular, the Wireless Telecommunications Bureau, and VDHR entered into an MOA with respect to mitigation measures for the Fries tower.

6. On November 30, 2006, the EBCI informed US Cellular that the Fries tower did not have an “adverse effect upon known cultural resources important to the Cherokee people.”⁵ The letter also stated that if in the future cultural resources or human remains were inadvertently discovered, Section 106 consultation⁶ between the United States Government and the EBCI would be required.

III. DEFINITIONS.

7. For the purposes of this Consent Decree, the following definitions shall apply:

- a. “Act” means the Communications Act of 1934, as amended;
- b. “Bureau” means the Enforcement Bureau of the Federal Communications Commission;
- c. “Commission” means the Federal Communications Commission;
- d. “Effective Date” means the date on which the Bureau releases the Adopting Order;
- e. “Investigation” means the investigation and any related proceedings commenced by the Wireless Telecommunications Bureau in January 2006 and the Bureau in October 2006 regarding construction of the Fries tower with respect to possible non-compliance by US

³ See Letter from Ethel R. Eaton, Manager, Office of Review and Compliance, Virginia Department of Historic Resources, to Jeffrey Steinberg, Federal Communications Commission, Wireless Telecommunications Bureau, Spectrum and Competition Policy Division (May 30, 2006).

⁴ *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073 (2004), *clarified*, 20 FCC Rcd 17995 (2005), *aff’d*, *CTIA-The Wireless Ass’n. v. FCC*, No. 05-1008 (D.C. Cir. September 26, 2006) (“*Nationwide Programmatic Agreement*”).

⁵ Letter from Tyler B. Howe, Tribal Historic Preservation Specialist, Eastern Band of Cherokee Indians, to M. E. Gibson, Jr., Esq., Tremblay & Smith, LLP (November 30, 2006).

⁶ Section 106 of the National Historic Preservation Act (“NHPA”), 16 U.S.C. § 470f, requires a federal agency to consider the effects of its federal undertakings, including actions that it authorizes or approves, on historic properties prior to issuing federal licenses, permits or approvals. In considering such effects, the NHPA requires a federal agency to consider the views of expert agencies. Specifically, the NHPA requires the federal agency to consider the views of the Advisory Council on Historic Preservation, the agency tasked with the responsibility for implementing the NHPA, the appropriate State Historic Preservation Officer, and, if affected historic properties are of religious or cultural significance to Indian tribes or Native Hawaiian organizations, their representatives. See 16 U.S.C. §§ 470a(a)(3), (d)(6)(B), 470f, 470i. Consistent with the Advisory Council’s regulations, the Commission’s environmental rules delegate the task of identification and consideration of the effects that proposed facilities may have on historic properties to its licensees, permittees and applicants, but the Commission remains ultimately responsible. See 47 C.F.R. § 1.1307(a)(4); *see also* 36 C.F.R. § 800.2(a)(3); *Nationwide Programmatic Agreement*, 20 FCC Rcd at 1076-77.

Cellular with the requirements contained in Sections 1.1307, 1.1308, 1.1311 and 1.1312 of the FCC's Rules during the period November 8, 2005 to December 23, 2005;

- f. "MOA" means the Memorandum of Agreement entered into between US Cellular, the Wireless Telecommunications Bureau and the VDHR on February 23, 2007 concerning mitigation measures for US Cellular's Fries, Virginia tower;
- g. "Order" or "Adopting Order" means an Order of the Bureau adopting the terms and conditions of this Consent Decree;
- h. "Parties" means US Cellular and the Bureau;
- i. "Rules" means the Commission's regulations set forth in Title 47 of the Code of Federal Regulations; and
- j. "US Cellular" means United States Cellular Corporation and any telecommunications carrier subsidiary, successor, or communications carrier controlled by United States Cellular Corporation.

IV. TERMS OF AGREEMENT.

8. US Cellular agrees that the Bureau has jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

9. The Parties agree that the provisions of this Consent Decree shall be subject to the final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

10. The Parties agree that this Consent Decree shall constitute a final settlement of the Investigation. In express reliance on the covenants and representations contained herein and to avoid the potential expenditures of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of these matters and in accordance with the terms of this Consent Decree, US Cellular agrees to the terms, conditions, and procedures contained herein.

11. The Parties agree that this Consent Decree shall become binding on the Parties on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other final order of the Commission and any violation of the terms and conditions of this Consent Decree shall constitute a violation of a Commission order.

12. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a federal or legal finding or determination regarding any compliance or noncompliance by US Cellular with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only, and that by agreeing to this Consent Decree, US Cellular does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act or the Commission's Rules which are the subject of this Consent Decree.

13. US Cellular agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of fourteen thousand dollars (\$14,000) within thirty (30) days of the Effective Date. The voluntary payment does not constitute a fine or penalty for, or an admission of, the violation of any law. Such contribution shall be made by credit card through the Commission's Debt and Credit Management Center at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. The payment should reference NAL/Acct. No. 200732100014 and FRN # 0008308199.

14. To resolve and terminate the Investigation, and to ensure compliance with the FCC's environmental rules, US Cellular also agrees to the following conditions.

- a. US Cellular will fulfill the conditions specified in the MOA applicable to it with respect to the Fries tower and Town of Fries which have been agreed to among US Cellular, the Wireless Telecommunications Bureau, and the VDHR.
- b. US Cellular will implement on a company wide basis detailed procedures to ensure environmental compliance. These procedures may be altered from time to time if US Cellular determines that other procedures may better enable it to comply with the FCC environmental requirements. US Cellular shall notify the Bureau and the Wireless Telecommunications Bureau in writing regarding such modifications at least 25 calendar days before they take effect and either the Bureau or the Wireless Telecommunications Bureau may disapprove such modification within 25 calendar days of their receipt of US Cellular's modification.
- c. US Cellular has recently commissioned and made part of its internal procedures "A Scope of Work For Compliance With the FCC's Environmental Rules" manual. The "Scope of Work" manual describes the FCC's environmental requirements and the federal laws and policies that are cited in or related to the FCC's environmental rules. It also spells out in detail the responsibilities for environmental compliance of US Cellular's outside consultants dealing with tower construction and those employees within US Cellular who supervise the consultants and the methods by which environmental compliance will be assured at each stage of the tower construction process. Attached to the Scope of Work manual are "checklists" by which responsible US Cellular employees may track environmental compliance for each new and collocated tower.
- d. US Cellular will provide annual training to its employees and consultants responsible for environmental compliance to ensure that they are aware of their responsibilities to ensure compliance with environmental requirements by both US Cellular and any consultants it may employ. US Cellular's Regulatory Compliance Manager, and such other employees and consultants as he considers appropriate, will also complete the class on "Section 106 Essentials" given by the Advisory Council on Historic Preservation or its equivalent.
- e. US Cellular has recently appointed an experienced Regulatory Compliance Manager, who is thoroughly familiar with the FCC's environmental requirements. He will monitor and supervise US Cellular's regulatory compliance efforts.
- f. US Cellular will submit reports, on an annual basis, to the Enforcement Bureau and the Wireless Telecommunications Bureau identifying all of US Cellular's Section 106 reviews that were active during the reporting period. For each such Section 106 review, US Cellular will specify the dates of any FCC Form 620 submission to the State Historic Preservation Officer and notification to tribes, local government and the public, as well as the resolution or current status of the review.

15. The Bureau agrees that, in the absence of new material evidence, it will not institute, on its own motion or in response to third-party objection, any new proceeding, formal or informal, or take any action on its own motion against US Cellular for possible past violations of the environmental regulations in Part 1 of the Rules that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion, or recommend to the Commission, any new proceeding, formal or informal, or to take any action on its own motion,

against US Cellular concerning the matters that were the subject of the Investigation. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion, or recommend to the Commission, any proceeding, formal or informal, or take any action on its own motion, against US Cellular with respect to its basic qualifications, including its character qualifications, to be a Commission licensee.

16. US Cellular waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Order adopts this Consent Decree without change, addition, or modification.

17. The Parties agree that if either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither US Cellular nor the Bureau shall contest the validity of the Consent Decree or the Adopting Order, and US Cellular will waive any statutory right to a trial *de novo* regarding the terms or validity of the Consent Decree. US Cellular, however, may present evidence that it has not violated the Consent Decree.

18. US Cellular agrees that any material violation of any term of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which US Cellular does not consent), that provision will be superseded by such Commission rule or order.

19. This Consent Decree cannot be modified without the advance written consent of both Parties.

20. In the event this Consent Decree is rendered invalid by a court of competent jurisdiction, it shall become null and void and may not be used in any manner, in any legal proceeding.

21. The Parties agree that the requirements of this Consent Decree shall expire two (2) years after the Effective Date.

22. The Consent Decree may be signed in counterparts.

For United States Cellular Corporation:

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Date	Grant B. Spellmeyer
	Director
	External Affairs

For the Enforcement Bureau:

_____	_____
Date	Kris Anne Monteith
	Chief, Enforcement Bureau